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# Censorship and Self-Censorship

The press and the law confronted each other in the Virginia mountains a few weeks ago. It was eyeball to eyeball and sometimes claw to claw. Both sides survived with convictions and prejudices intact for the most part, but with sensitivities raised.

The occasion was a conference of judges, prosecutor and lawyers and journalists from all branches of the media. It was held at the Homestead, a lovely, anachronistic Hot Springs resort hotel, courtesy of the Ford Foundation and The Washington Post.

The representatives of the law and the press worked over hypothetical cases concocted by three Harvard law professors, two of whom served as moderators. One involved a sensational CIA document, publication of which might jeopardize the lives of overseas operatives. Another concerned a struggle between a crusading reporter and officials, possibly corrupt, over disclosure of hanky-panky in oil leases. The third involved an irresponsible investigative reporter and scandalous material on three candidates for high office.

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Hardly the grist of a normal news day, but the cases served as launching pads for discussions that came closer to home:

• Should an editor publish a stolen document? The consensus among the journalists was that he should not publish it if his reporter stole it (although he might sneak a look at it), but he might publish it if someone else had stolen it and given it to his reporter. Some of the non-journalists seemed to find this an interesting bit of tightrope walking.

• Do court-issued temporary restraining orders forbidding publication violate the First Amendment guarantee of a free press? The judges generally felt that short-term restraints are sometimes needed to insure justice and do not violate the rights of the press so long as they are not used capriciously. They seemed surprised that editors felt that a restraint of even a few hours can be seriously damaging and that, in fact, any restraint prior to publication is an unconstitutional abridgement of the free press.

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• Should an editor pay for information to be used in a news story? The journalistic consensus was that he should not and would not. That prompted the presiding professor to wonder whether this position was taken on ethical grounds or because purchase of information might set an expensive precedent.

• Since the press claims virtual autonomy under the First Amendment, should it set up some system of self-policing? The judges seemed to find this a reasonable idea, but the journalists were wary.

In broadest outline, the differences between the judges and the journalists boiled down to this: The press maintained that it has the right to get and print anything that is true, and that restraints on that right should be self-imposed. The judges maintained that in an orderly society someone has to have the power to say no, and that in our society the judiciary has that power, the First Amendment notwithstanding.

The moderators from Harvard were skillful practitioners of the Socratic method of teaching, and they used it to sustain a high level of tension. In the Socratic method, the teacher—or moderator in this case—asks aggressive and persistent questions, the object being to arrive eventually at a basic truth. No basic truth was produced at the Homestead, but the abrasive effect of the technique appeared to have rubbed away some encrusted misconceptions on both sides. The participants developed an awareness that on each side of the fence that separates the courts and the press there is a deep concern for the public interest—that the judges weigh it before they hand down orders or decisions that curtail the press and the journalists weigh it before they decide to publish sensitive material.

At the end, there was a sense of exhaustion; the Socratic method is draining for those who participate and even for those who watch. There was also evident a sense of mutual understanding and respect among the participants—perhaps partly the camaraderie of people who have gone through a difficult experience together. As they departed the Homestead, a neutral observer might have observed that the press was waving the First Amendment just a bit less defiantly and that the judges had lowered slightly, but not furled, their restraining orders. But the lawyers who attended had no reason to fear a drying up of First Amendment litigation in the months and years ahead. The Homestead conference, and a previous meeting at Chatham, Mass., were only the beginning in what must be a long dialogue before there is any broad understanding between the judiciary and the press.

There is a footnote to the above for those who might have noticed the absence of names and direct quotations: The Homestead meeting dealt with matters of great public interest. Participants included big guns from the judicial, legal, governmental and media worlds. But their names and what they said cannot be revealed under a prior agreement (restraint?) entered into by all participants and observers, including this writer. The agreement had the laudable purpose of encouraging free discussion. But there is something faintly ironic about the fact that among those who entered into it were the members of the press who, in the course of the conference, were to argue that not even the secrecy that surrounds the grand jury room can withstand the people's right to know.